

ORDINANCE NUMBER O- 20014 (NEW SERIES)
DATE OF FINAL PASSAGE JAN 18 2011

AN ORDINANCE AMENDING CHAPTER 8, ARTICLE 3,
DIVISION 1 OF THE SAN DIEGO MUNICIPAL CODE BY
AMENDING SECTIONS 83.0104, 83.0127, AND 83.0128
RELATING TO PEDICABS.

WHEREAS, on September 11, 2009, the Council of the City of San Diego amended Chapter 8, Article 3, Division 1 of the San Diego Municipal Code related to Pedicabs (San Diego Ordinance O-19898); and

WHEREAS, that action removed a requirement that operators of a pedicab possess a valid California driver's license; and

WHEREAS, the requirement that pedicab operators possess a valid California driver's license was removed because it conflicted with the California Vehicle Code; and

WHEREAS, on September 30, 2010, the Governor of the State of California signed Assembly Bill 2294 which amended the California Vehicle Code, section 467.5 to define a pedicab and section 21100 to allow local authorities to require pedicab operators to possess a valid California driver's license; and

WHEREAS, the Council of the City of San Diego recognizes the value to public safety in having pedicab operators who have knowledge of the laws related to the operation of vehicles on public roadways as evidenced by the possession of a California driver's license; and

WHEREAS, the Council of the City of San Diego now desires to require that operators of pedicabs possess a valid California driver's license to further public safety; NOW,
THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 8, Article 3, Division 1 of the San Diego Municipal Code is amended by amending sections 83.0104, 83.0127, and 83.0128 to read as follows:

§83.0104 Application for Operating Permit

(a) through (c) [No change in text.]

(d) The applicant shall provide the following material to complete the application:

- (1) a valid form of federal or state issued photo identification;
- (2) a valid California driver's license;
- (3) proof of a valid Business Tax Certificate issued pursuant to Chapter 3, Article 1 of this Municipal Code;
- (4) two recent color passport-sized photographs;
- (5) a signed copy of the "Pedicab Operator Code of Conduct;
- and
- (6) such other material as the City Manager may require.

§ 83.0127 Denial, Suspension or Revocation of Operating Permit, Pedicab Decal or Pedicab Restricted Zone Decal; Notification of Action

(a) Operating permits, Pedicab Decals, or Pedicab Restricted Zone Decals may be denied, suspended or revoked by the City Manager based upon any of the following grounds:

- (1) the *operator* or *owner* fails to comply with the insurance requirements set forth in Section 83.0126;
- (2) the *operator* has been convicted of assault; battery; resisting arrest; any felony involving force and violence; any misdemeanor or

felony reckless driving or driving under the influence offense; or any crime reasonably related to the qualifications, functions, or duties of the passenger transport business or the ability of the *operator* to safely transport passengers, including a misdemeanor conviction under California Penal Code Section 415 as part of a plea bargain in satisfaction of or substitute for an original charge of any of those listed above, unless five years has elapsed from the date of discharge from a penal institution, or the successful completion of probation for such conviction;

- (3) the *operator* has been convicted of a crime that requires registration under the California Penal Code as a sex offender;
- (4) (4) the *operator* or *owner* has knowingly made a false statement of material fact, or knowingly failed to state a material fact in the application process for the operating permit, Pedicab Decal, or Pedicab Restricted Zone Decal;
- (5) the *operator* has engaged in activity that, in the judgment of the City Manager, constitutes a serious threat to public health, safety, or welfare. Such a threat may be indicated by, but is not limited to:
 - (A) a report from a law enforcement agency that the *pedicab* or *operator* was involved in a vehicle or pedestrian accident involving a *pedicab*, resulting in injuries; or
 - (B) the *operator* or *owner* is in violation of Section 83.0128(g).

- (6) the *operator* fails to comply with any applicable provisions of the California Vehicle Code.
- (b) The City Manager shall provide notice to the *operator* or *owner* of the denial or intent to suspend or revoke as follows:
 - (1) When, prior to the issuance of an *operating permit*, *Pedicab Decal*, or *Pedicab Restricted Zone Decal*, the City Manager has evidence that one of the grounds specified in Section 83.0127(a) exists, the City Manager shall serve an applicant with a notice that his or her application for an operating permit, Pedicab Decal, or Pedicab *Restricted Zone Decal* has been denied. The notice shall also advise the applicant of the right to appeal the denial. Service shall be by any of the methods listed in Municipal Code Section 11.0301.
 - (2) Where, after the issuance of an *operating permit*, *Pedicab Decal*, or *Pedicab Restricted Zone Decal*, the City Manager has information that one of grounds listed in Section 83.0127(a) exists, the City Manager shall notify the *operator* or *owner* of that information, and commence suspension or revocation proceedings as specified in Section 83.0128. The notice shall be served in accordance with Section 11.0301.
- (c) Section 83.0127(b)(2) notwithstanding, when, after the issuance of an *operating permit*, the City Manager receives a certified record of conviction for an offense meeting the criteria of Section 83.0127(a)(2)

or (a)(3), or receives a report from a government agency that contains information that the grounds specified in Section 83.0127(a)(5) exists, the City Manager may summarily suspend or revoke an *operating permit* without a prior hearing. The City Manager shall serve a notice of the suspension or revocation in accordance with Section 11.0301. The summary suspension or revocation shall remain in effect until the conclusion of the appeal process set forth in Section 83.0128.

§83.0128 Procedure for Denial, Suspension or Revocation of Operating Permits and Pedicab Decals or Pedicab Restricted Zone Decals

- (a) [No change in text.]
- (b) Where a notice of suspension or revocation is issued pursuant to Section 83.0127(b)(2), the notice shall:
 - (1) through (3) [No change in text.]
 - (4) specify subsequent procedures as follows:
 - (A) If the City Manager proposes to suspend an *operating permit, Pedicab Decal, or Pedicab Restricted Zone Decal* for 30 days or less, the notice shall specify:
 - (i) that the *operator or owner* may request a hearing;
 - (ii) that *any* such request must be filed with the City Manager within 10 days of service of the notice; and;
 - (iii) that the failure to submit a timely hearing request will be deemed a waiver of the right to a hearing and the penalty proposed by the City Manager shall

go into effect the first business day after the hearing request deadline has lapsed.

(B) [No change in text.]

(c) When the City Manager has summarily suspended or revoked an *operating permit, Pedicab Decal, or Pedicab Restricted Zone Decal* under the provisions of Section 83.0127(c), the City Manager shall, as soon as practicable, set the matter for a hearing before an *Enforcement Hearing Officer* and serve a notice of the hearing to the *owner or operator* by the methods listed in Section 11.0301. In no case shall the hearing be set for more than 15 days after the mailing of the notice of summary action.

(d) through (f) [No change in text.]

(g) An *operating permit, Pedicab Decal, or Pedicab Restricted Zone Decal* suspended or revoked pursuant to Section 83.0127 or 83.0128, including the period during which an *operating permit, Pedicab Decal, or Pedicab Restricted Zone Decal* has been summarily suspended pursuant to Section 83.0127(c), shall be deemed invalid for the purpose of Section 83.0103 during the period of suspension or upon revocation

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JAN I. GOLDSMITH, City Attorney

By:



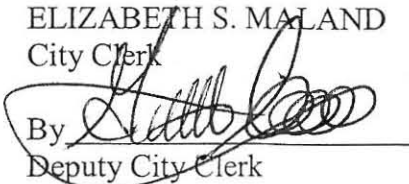
Ryan P. Kohut
Deputy City Attorney

RPK:cfq
10/27/2010
Or.Dept:E&CP

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of JAN 11 2011.

ELIZABETH S. MALAND
City Clerk

By:


Deputy City Clerk

Approved: 1-18-11

(date)


JERRY SANDERS, Mayor

Vetoed: _____

(date)

JERRY SANDERS, Mayor

STRIKEOUT ORDINANCE

OLD LANGUAGE – ~~Strikeout~~

NEW LANGUAGE – Double Underlined

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RELATING TO PEDICABS.

§ 83.0104 **Application for Operating Permit**

(a) through (c) [No change in text.]

(d) The applicant shall provide the following material to complete the
application:

- (1) a valid form of federal or state issued photo identification;
- (2) a valid California driver's license;
- (2)(3) proof of a valid Business Tax Certificate issued pursuant to
Chapter 3, Article 1 of this Municipal Code;
- (3)(4) two recent color passport-sized photographs;
- (4)(5) a signed copy of the "Pedicab Operator Code of Conduct;
and
- (5)(6) such other material as the City Manager may require.

§ 83.0127 **Denial, Suspension or Revocation of Operating Permit, Pedicab Decal or
Pedicab Restricted Zone Decal; Notification of Action**

(a) Operating permits, Pedicab Decals, or Pedicab Restricted Zone Decals
may be denied, suspended or revoked by the City Manager based upon
any of the following grounds:

- (1) the *operator* or *owner* fails to comply with the insurance requirements set forth in Section 83.0126;
- (2) the *operator* has been convicted of assault; battery; resisting arrest; any felony involving force and violence; any misdemeanor or felony reckless driving or driving under the influence offense; or any crime reasonably related to the qualifications, functions, or duties of the passenger transport business or the ability of the *operator* to safely transport passengers, including a misdemeanor conviction under California Penal Code Section 415 as part of a plea bargain in satisfaction of or substitute for an original charge of any of those listed above, unless five years has elapsed from the date of discharge from a penal institution, or the successful completion of probation for such conviction;
- (3) the *operator* has been convicted of a crime that requires registration under the California Penal Code as a sex offender;
- (4) (4) the *operator* or *owner* has knowingly made a false statement of material fact, or knowingly failed to state a material fact in the application process for the operating permit, Pedicab Decal, or Pedicab Restricted Zone Decal;
- (5) the *operator* has engaged in activity that, in the judgment of the City Manager, constitutes a serious threat to public health, safety, or welfare. Such a threat may be indicated by, but is not limited to:

- (A) a report from a law enforcement agency that the *pedicab* or *operator* was involved in a vehicle or pedestrian accident involving a *pedicab*, resulting in injuries; or
 - (B) the *operator* or *owner* is in violation of Section 83.0128(g)
- (6) the *operator* fails to comply with any applicable provisions of the California Vehicle Code.
- (b) The City Manager shall provide notice to the *operator* or *owner* of the denial or intent to suspend or revoke as follows:
- (1) When, prior to the issuance of an *operating permit*, *Pedicab Decal*, or *Pedicab Restricted Zone Decal*, the City Manager has evidence that one of the grounds specified in Section 83.0127(a) exists, the City Manager shall serve an applicant with a notice that his or her application for an operating permit, *Pedicab Decal*, or *Pedicab Restricted Zone Decal* has been denied. The notice shall also advise the applicant of the right to appeal the denial. Service shall be by any of the methods listed in Municipal Code Section 11.0301.
 - (2) Where, after the issuance of an *operating permit*, *Pedicab Decal*, or *Pedicab Restricted Zone Decal*, the City Manager has information that one of grounds listed in Section 83.0127(a) exists, the City Manager shall notify the *operator* or *owner* of that information, and commence suspension or revocation proceedings as specified in Section 83.0128. The notice shall be served in accordance with Section 11.0301.

~~Section 83.0127(b)(2) notwithstanding, when, after the issuance of an *operating permit*, the City Manager receives a certified record of conviction for an offense meeting the criteria of section 83.0127(a)(2) or (a)(3), or receives a report from a government agency that contains information that the grounds specified in section 83.0127(a)(5) exists, the City Manager may summarily suspend or revoke an *operating permit* without a prior hearing. The City Manager shall serve a notice of the suspension or revocation in accordance with section 11.0301. The summary suspension or revocation shall remain in effect until the conclusion of the appeal process set forth in Section 83.0128.~~

- (c) Section 83.0127(b)(2) notwithstanding, when, after the issuance of an *operating permit*, the City Manager receives a certified record of conviction for an offense meeting the criteria of section 83.0127(a)(2) or (a)(3), or receives a report from a government agency that contains information that the grounds specified in section 83.0127(a)(5) exists, the City Manager may summarily suspend or revoke an *operating permit* without a prior hearing. The City Manager shall serve a notice of the suspension or revocation in accordance with section 11.0301. The summary suspension or revocation shall remain in effect until the conclusion of the appeal process set forth in Section 83.0128.

§ 83.0128 Procedure for Denial, Suspension or Revocation of Operating Permits and Pedicab Decals or Pedicab Restricted Zone Decals

- (a) [No change in text.]
- (b) Where a notice of suspension or revocation is issued pursuant to section 83.0127(b)(2), the notice shall:

(1) through (3) [No change in text.]

(4) specify subsequent procedures as follows:

(A) If the City Manager proposes to suspend an *operating permit, Pedicab Decal, or Pedicab Restricted Zone Decal* for ~~less than 30 days~~ 30 days or less, the notice shall specify:

- (i) that the *operator* or *owner* may request a hearing;
- (ii) that *any* such request must be filed with the City Manager within 10 days of service of the notice; and;
- (iii) that the failure to submit a timely hearing request will be deemed a waiver of the right to a hearing and the penalty proposed by the City Manager shall go into effect the first business day after the hearing request deadline has lapsed.

(B) [No change in text.]

(c) When the City Manager has summarily suspended or revoked an *operating permit, Pedicab Decal, or Pedicab Restricted Zone Decal* under the provisions of Section 83.0127(b)(3) ~~(c)~~, the City Manager shall, as soon as practicable, set the matter for a hearing before an *Enforcement Hearing Officer* and serve a notice of the hearing to the *owner* or *operator* by the methods listed in Section 11.0301. In no case shall the hearing be set for more than 15 days after the mailing of the notice of summary action.

(d) through (f) [No change in text.]

- (g) An *operating permit, Pedicab Decal, or Pedicab Restricted Zone Decal* suspended or revoked pursuant to Section 83.0127 or 83.0128, including the period during which an *operating permit, Pedicab Decal, or Pedicab Restricted Zone Decal* has been summarily suspended pursuant to Section 83.0127(b)(3) (c), shall be deemed invalid for the purpose of Section 83.0103 during the period of suspension or upon revocation.

RPK:cfq
10/27/10
Or.Dept:E&CP

Passed by the Council of The City of San Diego on JAN 11 2011, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherri Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Kevin Faulconer	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Anthony Young	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Carl DeMaio	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JAN 18 2011

AUTHENTICATED BY:

JERRY SANDERS

Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

By [Signature], Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

DEC 07 2010

, and on JAN 18 2011.

~~I FURTHER CERTIFY that said ordinance was read in full prior to its final passage.~~

I FURTHER CERTIFY that the reading of said ordinance in full was dispensed with by a vote of not less than a majority of the members elected to the Council, and that there was available for the consideration of each member of the Council and the public prior to the day of its passage a written or printed copy of said ordinance.

ELIZABETH S. MALAND

City Clerk of The City of San Diego, California.

(Seal)

By [Signature], Deputy

Office of the City Clerk, San Diego, California

Ordinance Number O- 20014